

**JUDGE DANA L. RASURE'S**  
**GUIDELINES FOR CONCLUDING AN ADVERSARY PROCEEDING**

There are 3 ways to resolve an adversary proceeding to effect its closing:

1. **Dismissal** - resolves the legal action from a procedural perspective (Fed. R. Civ. P. 41 made applicable in adversary proceedings by Fed. R. Bankr. P. 7041).
  - A. Before service of a response – The plaintiff may dismiss an adversary proceeding without court order by filing a “Notice of Dismissal” at any time before the defendant responds. See Fed. R. Civ. P. 41(a)(1)(i). A form of “Notice of Dismissal” is attached. See Exhibit A.
  - B. After service of a response –
    - (i) The adversary proceeding may be dismissed upon the filing of an “Agreed Stipulation of Dismissal” signed by all parties who have appeared in the action. See Fed. R. Civ. P. 7041(a)(1)(ii). A form of “Agreed Stipulation of Dismissal” is attached. See Exhibit B.
    - (ii) Plaintiff may file a “Motion to Dismiss” to obtain an Order of Dismissal. See Fed. R. Civ. P. 41(a)(2). A form of “Motion to Dismiss” is attached. See Exhibit C.

A plaintiff may not dismiss a complaint objecting to a debtor’s discharge (§ 727 action) without notice to all parties in interest. A motion to dismiss the adversary proceeding should be prepared in accordance with Local Rule 9013 and served upon the trustee, United States Trustee, all creditors and any person who has requested notice. See Fed. R. Bankr. P. 7041; Bankr. N.D. Okla. LR 7041(a).

2. **Settlement** - an agreement between the parties that resolves the substance of the dispute.
  - A. Settlement agreement has not been fully performed (i.e. payments to plaintiff over a period of time):
    - (i) Parties may dismiss an adversary proceeding as set forth above, or they may submit an “Agreed Journal Entry of Judgment” and the court will immediately close the adversary proceeding. Enforcement of the settlement agreement must be sought in state court unless there is some independent basis for federal jurisdiction. See Kokkonen v. Guardian

Life Ins. Co. of Am., 511 U.S. 375 (1994).<sup>1</sup> The parties may agree to stay execution of the judgment pursuant to the terms of the settlement agreement. A form of “Agreed Journal Entry of Judgment” is attached. See Exhibit D.

- (ii) Parties may request that the court close the adversary proceeding subject to reopening, without fee, for the purpose of entering judgment against the defendant (in the event of default). See Fed. R. Civ. P. 41(a)(1)(ii). Parties should file an “Agreed Stipulation of Dismissal” specifically requesting that the Order of Dismissal incorporate the terms of the settlement agreement and/or that the court specifically retain jurisdiction over the settlement agreement. See Morris v. City of Hobart, 39 F.3d 1105 (10<sup>th</sup> Cir. 1994). A form of such “Agreed Stipulation of Dismissal” is attached. See Exhibit E.

- B. Upon full performance of a settlement agreement, the parties shall file an “Agreed Stipulation of Dismissal” signed by all parties who have appeared in the action.” See Fed. R. Civ. P. 41(a)(1)(ii). A form of “Agreed Stipulation of Dismissal” is attached. See Exhibit B.

- 3. **Judgment** - Final legal determination of disputed legal or factual issues that resolves legal rights from which an appeal can be taken. The adversary proceeding will be closed by the Court Clerk after 10 days from entry of the final Judgment unless the Judgment is appealed or there are other issues pending.

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<sup>1</sup> Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “If a proposed settlement or compromise of an adversary proceeding affects the estate, the parties shall file a joint motion for approval of such compromise in the adversary proceeding and in the bankruptcy case and serve the motion upon the debtor, debtor’s counsel, the trustee, the United States trustee, and parties who have requested notices in the case. A motion filed under this rule shall describe with specificity the contentions of the parties and the basis and terms of the settlement.” Bankr. N.D. Okla. LR 9019. “The Court, in its discretion, may set the motion for hearing notwithstanding compliance with the procedures of Local Rule 9013(c).” Id.

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**IN RE:**

**DOE, JOHN,**

**Debtor.**

**ACME, INC.,**

**Plaintiff,**

**v.**

**JOHN DOE,**

**Defendant.**

**Case No. 00-00000-R  
Chapter [X]**

**Adv. No. 00-00000-R**

**NOTICE OF DISMISSAL**

Plaintiff ACME, Inc. (the “Plaintiff”) seeks to dismiss the above-referenced adversary proceeding pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041. Plaintiff filed its Complaint on June 1, 2005, seeking a determination of the dischargeability of a certain debt. Defendant John Doe has not filed a response pleading in this adversary proceeding. Accordingly, Plaintiff seeks dismissal without court order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ABC Law Firm

\_\_\_\_\_  
Attorney Name, OBA #\_\_\_\_\_  
[Address/Telephone/Fax/Email]  
ATTORNEY FOR PLAINTIFF

**EXHIBIT B**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**IN RE:**

**DOE, JOHN,**

**Debtor.**

**ACME, INC.,**

**Plaintiff,**

**v.**

**JOHN DOE,**

**Defendant.**

**Case No. 00-00000-R  
Chapter [X]**

**Adv. No. 00-00000-R**

**AGREED STIPULATION OF DISMISSAL**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff ACME, Inc. and Defendant John Doe, being all parties who entered an appearance in the above-referenced adversary proceeding, hereby jointly and mutually stipulate to the dismissal of all claims asserted herein by virtue of any pleading entered or filed in this proceeding, [with/without] prejudice to refileing.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

**ABC Law Firm**

\_\_\_\_\_  
Attorney Name, OBA # \_\_\_\_\_  
[Address/Telephone/Fax/Email]  
**ATTORNEY FOR PLAINTIFF**

**XYZ Law Firm**

\_\_\_\_\_  
Attorney Name, OBA # \_\_\_\_\_  
[Address/Telephone/Fax/Email]  
**ATTORNEY FOR DEFENDANT**

**EXHIBIT C**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**IN RE:**

**DOE, JOHN,**

**Debtor.**

**ACME, INC.,**

**Plaintiff,**

**v.**

**JOHN DOE,**

**Defendant.**

**Case No. 00-00000-R  
Chapter [X]**

**Adv. No. 00-00000-R**

**MOTION TO DISMISS**

On April 1, 2005, Plaintiff ACME, Inc. (the "Plaintiff") filed its Complaint to Determine Dischargeability of a Debt, seeking to except from discharge a certain debt pursuant to Section 523(a)(4) of the Bankruptcy Code (the "Complaint"). On April 15, 2005, Defendant John Doe (the "Defendant") filed his Answer to the Plaintiff's Complaint.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff seeks to dismiss all claims set forth in the Complaint [on the basis that the Defendant has paid all sums due pursuant to the Court approved settlement agreement].

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

**ABC Law Firm**

\_\_\_\_\_  
Attorney Name, OBA #\_\_\_\_\_  
[Address/Telephone/Fax/Email]  
**ATTORNEY FOR PLAINTIFF**

**EXHIBIT D**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**IN RE:**

**DOE, JOHN,**

**Debtor.**

**ACME, INC.,**

**Plaintiff,**

**v.**

**JOHN DOE,**

**Defendant.**

**Case No. 00-00000-R  
Chapter [X]**

**Adv. No. 00-00000-R**

**AGREED JOURNAL ENTRY OF JUDGMENT**

Plaintiff ACME, Inc. (the “Plaintiff”) and Defendant John Doe (the “Defendant”) jointly and mutually agree that judgment shall be entered against the Defendant under 11 U.S.C. § 523(a)(2)(A).

Plaintiff and Defendant agree that the debt incurred by the Defendant in the amount of \$1,000 constitutes a nondischargeable debt under Section 523(a)(2)(A) of the Bankruptcy Code. The Defendant agrees to repay the total indebtedness of \$1,000 to the Plaintiff at the rate of \$100 per month beginning on June 1, 2005, and continuing thereafter on the first day of each month until the debt is paid in full. The unpaid balance accrues interest at the rate of one percent (1%) per month.

**IT IS THEREFORE ORDERED** that the debt incurred by the Defendant in the amount of \$1,000 is a nondischargeable debt in the above-referenced bankruptcy case and the Plaintiff is granted Judgment against the Defendant in the amount of \$1,000. The debt incurs interest at the rate of one percent (1%) per month on the unpaid balance. The Defendant shall repay the debt according

to the terms hereinabove stated.

**IT IS FURTHER ORDERED** that upon the failure of the Defendant to cure any default under this payment plan, the Plaintiff may declare the total amount outstanding, plus interest, immediately due and payable.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Bankruptcy Judge

**ABC Law Firm**

\_\_\_\_\_  
Attorney Name, OBA #\_\_\_\_\_  
[Address/Telephone/Fax/Email]  
**ATTORNEY FOR PLAINTIFF**

**XYZ Law Firm**

\_\_\_\_\_  
Attorney Name, OBA #\_\_\_\_\_  
[Address/Telephone/Fax/Email]  
**ATTORNEY FOR DEFENDANT**

**EXHIBIT E**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**IN RE:**

**DOE, JOHN,**

**Debtor.**

**ACME, INC.,**

**Plaintiff,**

**v.**

**JOHN DOE,**

**Defendant.**

**Case No. 00-00000-R  
Chapter [X]**

**Adv. No. 00-00000-R**

**AGREED STIPULATION OF DISMISSAL**

*(Subject to Reopening, without fee, for purposes of entering judgment in the event of default)*

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff ACME, Inc. (the "Plaintiff") and Defendant John Doe (the "Defendant"), being all parties that entered an appearance in the above-referenced adversary proceeding, hereby jointly and mutually stipulate to the dismissal of the adversary proceeding subject to reopening, for purposes of entering judgment against the Defendant in the event of default under the settlement agreement. The parties have agreed that [the Defendant owes a debt to the Plaintiff in the aggregate amount of \$1,000. The Defendant shall pay to the Plaintiff ten (10) consecutive payments of \$100 beginning on June 1, 2005. Upon any default or failure to cure a default under the terms of repayment of the debt set forth above, the Plaintiff may reopen the adversary proceeding to seek judgment against the Defendant.]

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

[Signature blocks for Plaintiff and Defendant]